

***Claim Objections***

In the Office Action, the Examiner objected to claims 23, 24, 56, 57, 59, and 60 as allegedly depending from a rejected base claim, but indicated the allowability of these claims if rewritten in independent form:

Claims 23, 24, 56, 57, 59, and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 23-24 that the Examiner objects to depend from independent claim 22, and claims 56-57 and 59-60 that the Examiner objects to depend from independent claim 22.

Applicant appreciates the Examiner's recognition that claims 23, 24, 56, 57, 59, and 60 each define allowable subject matter. However, Applicant currently declines the Examiner's invitation to rewrite claims 23, 24, 56, 57, 59, and 60 in independent form, since Applicant believes claims 22 and 53 are allowable, as explained more fully below. Consequently, Applicant believes claims 23, 24, 56, 57, 59, and 60 are each allowable. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the object to claims 23, 24, 56, 57, 59, and 60 and that claims 23, 24, 56, 57, 59, and 60 be allowed.

***Claim Rejections Under The Second Paragraph of 35 U.S.C. §112***

In the Office Action, the Examiner rejected claims 50 and 51 under the second paragraph of 35 U.S.C. §112 as allegedly "being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." In support of this rejection, the Examiner stated:

It is unclear as to what particular temperatures are contemplated in claims 50 and 51 because the functional language used in claims is unclear. An amendment to the claims clarifying this issue would overcome the rejection.

Despite the Examiner's comments, Applicant asserts the language of concern to the Examiner in claims 50-51 is definite in accordance with the second paragraph of 35 U.S.C. §112.

Claims 50 and 51 of concern to the Examiner read as follows:

50. *The method of claim 47 wherein forming the coating blend comprises:*

*heating the fat and an emulsifying agent to form a heated fat phase, the fat heated to a temperature sufficient to remove any memory of crystallization from the fat; adding an aqueous solution to the heated fat phase under high shear mixing conditions to form the coating blend; and crystallizing fat present in the coating blend.*

51. *The method of claim 50, the method further comprising:*  
*blending a water-soluble form of the flavor additive into the aqueous solution prior to addition of the aqueous solution to the heated fat phase;*  
*blending an oil-soluble form of the flavor additive into the fat phase prior to addition of the aqueous solution to the fat phase; or*  
*emulsifying an oil-soluble form of the flavor additive in the aqueous solution prior to addition of the aqueous solution to the heated fat phase.*

Thus, the “heated to a temperature sufficient to remove any memory of crystallization from the fat” phrase of concern to the Examiner appears in claim 50, and the Examiner has rejected claim 51 merely because claim 51 depends from claim 50 and therefore includes all of the details of claim 50, including the ‘heated to a temperature sufficient to remove any memory of crystallization from the fat’ phrase of concern to the Examiner.

The second paragraph of 35 U.S.C. §112 is concerned with whether those skilled in the art will be able to understand with a reasonable degree of accuracy what subject matter is circumscribed by the invention that is defined by a particular claim. If those skilled in the art can reasonably determine whether any particular subject matter either falls within the scope of a particular claim or falls outside the scope of the particular claim, that claim is not indefinite or ambiguous under the second paragraph of 35 U.S.C. §112. The mere fact that the “heated to a temperature sufficient to remove any memory of crystallization from the fat” terminology of claim

50 is broad and does not specify the temperature numerically does not render this claim language indefinite. Instead, this merely means that one seeking to determine if his or her process infringes claim 50 will need to determine if the temperature to which they heat the fat is “sufficient to remove any memory of crystallization from the fat” when evaluating the infringement potential.

Furthermore, there is no evidence that one of ordinary skill in the art would be confused by what is meant by heating “to a temperature sufficient to remove any memory of crystallization from the fat.” Instead, this concept of heating fat to remove crystalline memory is well understood by those of ordinary skill in the art of fat processing. For example, details about heating fat to remove crystalline memory appear in the patent literature. In this regard, U.S. Patent No. 5,023,102 states: “The confectioner's composition is initially heated to about 35°C to 70°C for a sufficient time to melt all of the fat crystals and to erase all crystal memory” (col. 9, line 68, through col. 10, line 3), and U.S. Patent No. 5,589,216 states: “Reduced calorie fat samples are melted and held at 140°F (60°C) for one hour to remove any traces of crystal memory” (col. 24, lines 21-23). Likewise, PCT Publication No. WO/0205921 A1 states: “The fat was melted and, while stirring (50 rpm), was kept at 65°C for at least 1 hour to ensure thorough melting and to avoid so-called ‘memory effect’.” (Page 22, lines 20-22). Copies of U.S. Patent Nos. 5,023,102 and 5,589,216 and PCT Publication No. WO/0205921 A1 are enclosed for the Examiner's convenience.

Furthermore, the claims are to be read in light of the specification. Essentially, the specification acts as a dictionary of sorts for shorthand terminology that is used in the claims. Applicant is not required to include explanations about claim terminology from the specification into the claims. Instead, explanations of claim terminology are properly placed in the specification, as Applicant has done. For example, the specification of the above-identified application includes the following discussion about the beneficial effect of losing fat crystalline memory in accordance with claim 50:

Preferably, all fat crystalline structures and fat crystal nuclei of the fat(s) 112, the emulsifying agent(s) 114, the optional flavor component(s) 118, and the optional color component(s) 120 are heated sufficiently to liquify all fat crystalline structures and all fat

crystal nuclei and cause the fat crystalline structures and fat crystal nuclei to lose any crystalline memory. This loss of all crystalline memory by all fat crystalline structures and fat crystal nuclei of the fat(s) 112, the emulsifying agent(s) 114, the optional flavor component(s) 118, and the optional color component(s) 120 helps minimize, and preferably eliminate, any premature fat crystal formation in the fat blend 122 before fat crystal formation is desired.

(Page 11, line 22, through page 12, line 3). Indeed, as one preferred form of the present invention, the specification states that heating the fat to at least about 155°F, or more, is sufficient to cause loss of all crystalline memory by all fats employed:

In pursuit of this goal, the fat(s) 112 and the emulsifying agent(s) 114 preferably are each heated to a temperature of at least about 155°F, or more.

(Page 11, lines 12-14).

The foregoing comment demonstrate that those skilled in the art will be able to understand with a reasonable degree of accuracy what subject matter is circumscribed by the invention defined by claims 50 and 51 in accordance with the second paragraph of 35 U.S.C. §112. Indeed, there is no evidence that one of ordinary skill in the art would be confused by what is meant by heating “to a temperature sufficient to remove any memory of crystallization from the fat.” Instead, as evidenced by its use in the patent literature, this concept of heating fat to remove crystalline memory is well understood by those of ordinary skill in the art of fat processing.

Claims 50 and 51 are believed allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 50 and 51 under the second paragraph of 35 U.S.C. §112 and that claims 50 and 51 be allowed.

#### ***Claim Rejections Under The Written Description Requirement of the First Paragraph of 35 U.S.C. §112***

In the Office Action, the Examiner rejected claims 50 and 51 under the written description requirement of the first paragraph of 35 U.S.C. §112 as allegedly “containing subject matter which was not described in the specification in such a way as to reasonably convey to one

skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” In support of this rejection, the Examiner stated:

Examiner cannot find the phrase ‘heated to a temperature sufficient to remove any memory of crystallization from the fat’ in the specification. Thus it is unclear as to what particular temperatures are contemplated by this phrase.

Despite the Examiner’s comments, Applicant asserts the language of concern to the Examiner in claims 50-51 is supported by an adequate written description in accordance with the first paragraph of 35 U.S.C. §112.

Numerous cases hold that an original claim -- that is a claim contained in the patent specification when the specification is filed -- complies with the §112 written description requirement. For example, In re Koller states, "Original claims constitute their own description." 204 U.S.P.Q. 702, 706 (C.C.P.A. 1980); In re Smith and Hubin, 178 U.S.P.Q. 620, 624 (C.C.P.A.). Therefore, despite the Examiner’s stated written description rejection, the specification does contain an adequate written description of the invention defined in claims 50 and 51, since claims 50 and 51 are each original claims of the above-identified application.

Claims 50 and 51 are believed allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 50 and 51 under the written description requirement of the first paragraph of 35 U.S.C. §112 and that claims 50 and 51 be allowed.

#### ***Claim Rejections Under The Enablement Requirement of the First Paragraph of 35 U.S.C. §112***

In the Office Action, the Examiner rejected claims 50 and 51 under the enablement requirement of the first paragraph of 35 U.S.C. §112 “because the specification, while being enabling for a particular temperature,” allegedly “does not reasonably provide enablement for a ‘temperature sufficient to remove any memory of crystallization of the fat.’” In support of this rejection, the Examiner stated:

The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Despite the Examiner's comments, Applicant asserts the language of concern to the Examiner in claims 50-51 is enabled in accordance with the first paragraph of 35 U.S.C. §112.

The enablement requirement of the first paragraph of 35 U.S.C. §112 is concerned with whether the specification disclosure teaches how to make and use the invention that is defined in the claims. In making an enablement rejection, the Examiner bears the initial burden of setting forth a reasonable factual explanation, based on the record as a whole, why the Examiner believes the scope of protection provided by the claims is not adequately enabled by the description of the invention that is defined in the claims. In re Wright, 27 U.S.P.Q.2d 1510, 1513 (Fed. Cir. 1993).

The Examiner has not addressed this requirement of In re Wright, since the Examiner has not set forth a reasonable factual explanation, based on the record as a whole, why the Examiner believes the scope of protection provided by the claims is allegedly not adequately enabled by the description of the invention defined in claims 50-51. The burden of producing evidence of enablement does not shift to Applicant unless and until the Examiner meets this burden under In re Wright. Id. In the course of addressing this burden, the Examiner must provide good and sufficient reasons that adequately and reasonably explain why the Examiner doubts assertions contained in this specification that relate to the existence and scope of enablement. Id.

Furthermore, if the specification disclosure *does* teach how to make and use the claimed invention, in terms that correspond to or are broader than the terms used in the claims, the specification disclosure *must* be considered to be enabling under the first paragraph of §112, unless the Examiner explains why the Examiner doubts the truth or accuracy of any enabling statement in the disclosure. In re Marzocchi & Horton, 169 U.S.P.Q. 367, 369 (C.C.P.A. 1971). The Examiner must back up assertions controverting the truth and accuracy of enabling statements with acceptable evidence or reasoning as to why the enabling statement is believed untrue or inaccurate. Marzocchi, 169 U.S.P.Q. at 369.

Here, the specification disclosure *does* teach how to make and use the claimed invention, in terms that correspond to or are broader than the terms used in rejected claims 50-51. First, the details included in claims 50-51 are part of the specification disclosure, since claims 50-51 are original claims, and original claims are considered to be part of the specification.

Furthermore, besides original claims 50-51, other portions of the specification disclose the “heating to a temperature sufficient to remove any memory of crystallization of the fat” details of claims 50-51 in terms that are at least as broad as those employed in claims 50-51. For example, the specification additionally states:

No matter how the heating is accomplished, the fat(s) 112 and the emulsifying agent(s) 114 are preferably heated sufficiently to (1) completely melt both the fat(s) 112 and the emulsifying agent(s) 114 (2) remove any memory of crystallization originally present in the fat(s) 112 and the emulsifying agent(s) 114, and (3) support full and homogenous dispersal of the emulsifying agent(s) 114 within the fat(s) 112 in the tank 116. In pursuit of this goal, the fat(s) 112 and the emulsifying agent(s) 114 preferably are each heated to a temperature of at least about 155°F, or more. In addition to the fat(s) 112 and the emulsifying agent(s) 114, any oil-soluble flavor component(s) 118 and any oil-soluble color component(s) 120 that are added to the tank 116, are preferably added to the tank 116 *after* the fat(s) 112 and the emulsifying agent(s) 114 are fully melted to allow homogenous dispersal of any added flavor component(s) 118 and/or color component(s) 120 within the mixture of fat(s) 112 and emulsifying agent(s) 114.

(Page 11, lines 7-19). Thus, besides claims 50-51 themselves, the section of the specification recited above additionally discloses sufficient heating of fat(s) to completely melt the fat(s) and remove any memory of crystallization originally present in the fat(s). Furthermore, in pursuit of this goal of heating to completely remove fat crystalline memory, the section of the specification recited above states that the fat(s) are preferably each “heated to a temperature of at least about 155°F, or more.” (Page 11, lines 12-14). Further discussion about heating the fat to a “temperature sufficient to remove any memory of crystallization from the fat” in accordance with claims 50-51 is provided elsewhere in the specification of the above-identified application:

Preferably, all fat crystalline structures and fat crystal nuclei of the fat(s) 112, the emulsifying agent(s) 114), the optional flavor component(s) 118, and the optional color component(s) 120 are heated sufficiently to liquify all fat crystalline structures and all fat crystal nuclei and cause the fat crystalline structures and fat crystal nuclei to lose any crystalline memory. This loss of all crystalline memory by all fat crystalline structures and fat crystal nuclei of the fat(s) 112, the emulsifying agent(s) 114), the optional flavor component(s) 118, and the optional color component(s) 120 helps minimize, and preferably eliminate, any premature fat crystal formation in the fat blend 122 before fat crystal formation is desired.

(Page 11, line 22, through page 12, line 3). Thus, ample evidence exists demonstrating that the specification disclosure *does* teach how to make and use the claimed invention, in terms that correspond to, or are broader than, the terms used in claims 50-51.

Since the specification disclosure *does* teach how to make and use the claimed invention, in terms that correspond to or are broader than the terms used in claims 50-51, the Examiner has the burden, under In re Wright, of setting forth a reasonable factual explanation, based on the record as a whole, demonstrating why the Examiner believes the scope of protection provided by claims 50-51 is allegedly not adequately enabled by the description of the invention defined in claims 50-51. In the course of addressing this burden, the Examiner will need to provide good and sufficient reasons that adequately and reasonably explain why the Examiner doubts assertions contained in the specification (including the originally-filed claims) that relate to the existence and scope of enablement. In re Wright, 27 U.S.P.Q.2d at 1513. Furthermore, the Examiner will need to back up assertions controverting the truth and accuracy of enabling statements with acceptable evidence or reasoning that demonstrates why the enabling statement is believed untrue or inaccurate. Marzocchi, 169 U.S.P.Q. at 369.

Claims 50 and 51 are believed allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 50 and 51 under the enablement requirement of the first paragraph of 35 U.S.C. §112 and that claims 50 and 51 be allowed.

***Claim Rejections Under 35 U.S.C. §102(b) Based On The Belleson Patent***

In the Office Action, the Examiner rejected claims 1-6, 18-20 and 27-32 under 35 U.S.C. 102(b) as allegedly “being clearly anticipated by” U.S. Patent No. 4,751,090 to Belleson (referred to herein as the “Belleson patent”). According to the Examiner:

Belleson discloses a composition for preparing glazed microwave popcorn. The glazing blend contains oil, sugar, water and lecithin. At column 5, lines 6-25, the composition is described as an oil-in-water emulsion. Salt is further included as a flavoring ingredient. The amount of unpopped corn to coating is shown at column 4, lines 45-55.

Despite the Examiner’s comments, the Belleson patent does not disclose each and every feature of claims 1-6, 18-20 and 27-32 and therefore does not anticipate claims 1-6, 18-20 and 27-32.

**Claims 1-3 and 27-29**

We first consider independent claims 1 and 27 that read as follows:

1. *A composition, the composition comprising:  
a puffable food component; and  
an edible emulsion in coating relation with the puffable food  
component, the edible emulsion being a water-in-  
oil emulsion or an oil-in-water-in-oil emulsion  
and the edible emulsion comprising a sweetening  
agent, the edible emulsion transformable into a  
coating on a puffed form of the puffable food  
component upon application of energy to the  
composition that is sufficient to puff the puffable  
food component.*

27. *A method of making a coated puffed food product, the method  
comprising:*

*forming an edible emulsion, the edible emulsion being a  
water-in-oil emulsion or an oil-in-water-in-oil  
emulsion and the edible emulsion comprising a  
sweetening agent;  
placing the edible emulsion and a puffable food component in  
coating relation with each other; and*

*applying energy to the edible emulsion and to the puffable food component, the applied energy effective to transform the puffable food component into a puffed food component while transforming the edible emulsion into a coating on the puffed food component to form the coated puffed food product.*

Thus, claims 1 and 27 each require an edible emulsion, where the edible emulsion is either (1) a water-in-oil emulsion or (2) an oil-in-water-in-oil emulsion..

The Belleson patent discloses a coating composition that is in the form of an oil-in-water emulsion, as the Examiner asserts. However, the Belleson patent does not disclose either the water-in-oil emulsion or the oil-in-water-in-oil emulsion that are defined in claims 1 and 27. Furthermore, the Examiner does not even allege the Belleson patent discloses the water-in-oil emulsion or the oil-in-water-in-oil emulsion defined in claims 1 and 27.

The Belleson patent does not disclose each and every detail required by claims 1 and 27. Consequently, the Belleson patent does not anticipate claims 1 and 27.

Therefore, claims 1 and 27 are believed allowable. Also, claims 2-3 are allowable, since claims 2-3 depend from allowable claim 1. Likewise, claims 28-29 are allowable, since claims 28-29 depend from allowable claim 27.

### Claims 18-20

We next consider independent claim 18 that reads as follows:

18. *A composition, the composition comprising:*  
*a puffable food component; and*  
*a coating blend, the puffable food component located in coating*  
*relation with the coating blend, the coating blend*  
*comprising:*  
*fat or oil;*  
*water;*  
*a sweetener; and*  
*a flavor additive, the flavor additive isolated from the*  
*sweetener and from the puffable food*  
*component and the sweetener isolated from the*

*flavor additive and from the puffable food component.*

Claim 18 discloses a composition that comprises a puffable food component and a coating blend. The coating blend of claim 18 comprises water, fat or oil, a sweetener, and a flavor additive. According to claim 18, (a) the flavor additive is isolated from (i) the sweetener and from (ii) the puffable food component, while (b) the sweetener is isolated from (i) the flavor additive and from (ii) the puffable food component. The specification of the above-identified application gives salt as one example, among others, of a flavor additive. (Page 43, lines 20-23).

The Belleson patent discloses that all components of the Belleson coating formulation may be combined at the same time. (Col. 5, lines 27-29). Alternatively, when the fat and aqueous phases are formed separately before being combined, (col. 5, lines 29-32) the Belleson patent discloses that salt is merely incorporated in the aqueous phase (the sugar phase) by mixing the salt, sugars, and any other flavored solutions all together. (Col 8, line 67, through col. 9, line 2). Thus, the Belleson patent just mixes all of the aqueous phase components together without making any attempt or provision to keep the sugars, salt, or other aqueous phase flavoring component separate from each other. Furthermore, as the Examiner admits, the Belleson patent, like the above-identified application, characterizes salt as a flavoring agent. (Col. 8, lines 41-47). Thus, without even considering the Belleson interaction of the sweetener and unpopped corn or the Belleson interaction of the flavoring agent and the unpopped corn, it is clear the Belleson patent does not disclose any isolation of flavoring components (such as salt) from the sweetening agent, and vice versa, as claim 18 requires.

The Belleson patent does not disclose each and every detail required by claim 18. Consequently, the Belleson patent does not anticipate claim 18. Therefore, claim 18 is believed allowable. Also, claims 19-20 are allowable, since claims 19-20 each depend from allowable claim 18.

Claims 4-6 and 30-32

Finally, we consider independent claims 4 and 30 that read as follows:

4. (Amended) *A composition, the composition comprising:*  
*a puffable food component; and*  
*a coating blend, the puffable food component located in*  
*coating relation with the coating blend, the coating*  
*blend comprising a sweetening agent, the coating*  
*blend effective for forming a fat continuous coating*  
*that comprises water on a puffed form of the puffable*  
*food component upon application of energy to the*  
*composition that is sufficient to puff the puffable food*  
*component.*

30. (Amended) *A method of making a coated puffed food product,*  
*the method comprising:*  
*forming a coating blend, the coating blend comprising a*  
*sweetening agent;*  
*placing the coating blend and a puffable food component in*  
*coating relation with each other; and*  
*applying energy to the coating blend and to the puffable food*  
*component, the applied energy effective to transform*  
*the puffable food component into a puffed food*  
*component while transforming the edible emulsion*  
*into a fat continuous coating on the puffed food*  
*component to form the coated puffed food product, the*  
*fat continuous coating comprising water.*

According to claim 4, “the coating blend is effective for forming a fat continuous coating that comprises water on a puffed form of the puffable food component.” Similarly, according to claim 30, the edible emulsion is transformed “into a fat continuous coating on the puffed food component,” and the fat continuous coating is characterized as “comprising water.” Support for the water content details for the fat continuous coating of claims 4 and 30 exists at page 54, lines 20-24, of the above-identified application.

Both claims 4 and 30 state that the fat continuous coating formed on the puffed food component comprises water. On the other hand, the Belleson patent states that “all of the water” has evaporated from the glaze blend upon formation of the glaze on the popped corn of the Belleson

process. (Col. 7, lines 5-15). Thus, the Belleson patent does not disclose each and every detail required by claims 4 and 30. Consequently, the Belleson patent does not anticipate claims 4 and 30.

Therefore, claims 4 and 30 are believed allowable. Also, claims 5-6 are allowable, since claims 5-6 depend from allowable claim 4. Likewise, claims 31-32 are allowable, since claims 31-32 depend from allowable claim 30.

Claims 1-6, 18-20 and 27-32 are believed allowable for at least the reasons provided above. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections of claims 1-6, 18-20 and 27-32 under 35 U.S.C. §102(b) based on the Belleson patent and that claims 1-6, 18-20 and 27-32 be allowed.

***Claim Rejections Under 35 U.S.C. §102(b) Based On The Van Hulle Patent***

In the Office Action, the Examiner rejected claims 4, 5, 18, 21, 30, 31, 47 and 52 under 35 U.S.C. 102(b) as allegedly “being clearly anticipated by” U.S. Patent No. 4,409,250 to Van Hulle (referred to herein as the “Van Hulle patent”). According to the Examiner:

Van Hulle discloses a food composition for preparing a sugary coated puffed snack product. The weight ratio of puffing media to puffed pieces ranges from 4:1 to 0.1:1. The puffed pieces are dough compositions. The puffing medium is shown in example 2 to include sucrose, corn syrup, coconut oil and water. The product is puffed in a microwave oven. Flavor is included as a minor ingredient (column 6, line 39).

Despite the Examiner’s comments, the Van Hulle patent does not disclose each and every feature of claims 4, 5, 18, 21, 30, 31, 47 and 52 and therefore does not anticipate claims 4, 5, 18, 21, 30, 31, 47 and 52.

**Claims 18, 21, 47, and 52**

As noted above with regard to the Examiners’s rejection based on the Belleson patent, claim 18 discloses a composition that comprises a puffable food component and a coating blend. The coating blend of claim 18 comprises water, fat or oil, a sweetener, and a flavor additive. According to

claim 18, (a) the flavor additive is isolated from (i) the sweetener and from (ii) the puffable food component, while (b) the sweetener is isolated from (i) the flavor additive and from (ii) the puffable food component. The specification of the above-identified application gives salt as one example, among others, of a flavor additive. (Page 43, lines 20-23).

Claim 47 reads as follows:

47. *A method of making a coated puffed food product, the method comprising:*

*forming a coating blend, the coating blend comprising:*

*a fat;*

*water;*

*a sweetener; and*

*a flavor additive;*

*placing the coating blend and a puffable food component in coating relation with each other, the flavor additive isolated from the sweetener and from the puffable food component and the sweetener isolated from the flavor additive and from the puffable food component; and*

*applying energy to the coating blend and to the puffable food component, the applied energy effective to transform the puffable food component into a puffed food component while transforming the coating blend into a coating on the puffed food component to form the coated puffed food product.*

Thus claim 47, like claims 18, discloses a composition that comprises a puffable food component and a coating blend, where the coating blend comprises water, fat or oil, a sweetener, and a flavor additive. Furthermore, like claim 18, claim 47 specifies that (a) the flavor additive is isolated from (i) the sweetener and from (ii) the puffable food component, while (b) the sweetener is isolated from (i) the flavor additive and from (ii) the puffable food component.

The Van Hulle patent discloses that all components (sugars, salt, melted butterfat) of the Van Hulle coating are merely combined in a mixer to form the Van Hulle coating. (Col. 11, lines 55-59). The Van Hulle patent does not disclose any separate formation of a fat phase and an aqueous phase. Thus, the Van Hulle patent just mixes all of the different components together without making any attempt or provision to keep the sugars, salt, or other flavoring components separate from each other.

Thus, without even having to consider the Van Hulle interaction of the sweetener and unpuffed pellets corn or the Van Hulle interaction of the flavoring agent and the unpuffed pellets, it is clear the Van Hulle patent does not disclose any isolation of flavoring components (such as salt or any of the flavors mentioned at col. 6, lines 38-42) from the sweetening agents, and vice versa, as claims 18 and 47 each require.

Thus, the Van Hulle patent does not disclose each and every detail required by claims 18 and 47. Consequently, the Van Hulle patent does not anticipate claims 18 and 47.

Therefore, claims 18 and 47 are believed allowable. Also, claim 21 is allowable, since claim 21 depends from allowable claim 18. Likewise, claim 52 is allowable, since claim 52 depends from allowable claim 47.

#### Claims 4-5 and 30-31

Next, as mentioned above with regard to the Examiner's rejections based on the Belleson patent, claim 4 states: "the coating blend is effective for forming a fat continuous coating that comprises water on a puffed form of the puffable food component." Similarly, according to claim 30, the edible emulsion is transformed "into a fat continuous coating on the puffed food component," and the fat continuous coating is characterized as "comprising water." Support for the water content details for the fat continuous coating of claims 4 and 30 exists at page 54, lines 20-24, of the above-identified application.

Both claims 4 and 30 state that a fat continuous coating forms on the puffed form of the puffable food component. There is no disclosure in the Van Hulle patent about the completed coating on the puffed elements having a fat continuous character, as claims 4 and 30 each require. Furthermore, claims 4 and 30 each state that the fat continuous coating formed on the puffed form of the puffable food component comprises water. The Van Hulle patent does not disclose anything about the final water content, if any, of the completed coating on the puffed elements.

Thus, the Van Hulle patent does not disclose each and every detail required by claims 4 and 30. Consequently, the Van Hulle patent does not anticipate claims 4 and 30.

Therefore, claims 4 and 30 are believed allowable. Also, claim 5 is allowable, since claim 5 depends from allowable claim 4. Likewise, claim 31 is allowable, since claim 31 depends from allowable claim 30.

Claims 4-5, 18, 21, 30-31, 47, and 52 are believed allowable for at least the reasons provided above. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 4-5, 18, 21, 30-31, 47, and 52 under 35 U.S.C. §102(b) based on the Van Hulle patent and that claims 4-5, 18, 21, 30-31, 47, and 52 be allowed.

***Claim Rejections Under 35 U.S.C. §102(b) Based On The Lee Patent***

In the Office Action, the Examiner rejected claims 4, 5, 18-20, 30, 32, 47-49 and 52 under 35 U.S.C. 102(b) as allegedly “being clearly anticipated by” U.S. Patent No. 4,927,645 to Lee ( referred to herein as the “Lee patent”). According to the Examiner:

Lee discloses a process for making candy coated snack foods, such as popcorn. At example VII the caramel coating syrup is described to contain sugar, corn syrup, molasses, salt, oil, lecithin and water. In examples II and VI the syrup is combined with unpopped popcorn.

Despite the Examiner’s comments, the Lee patent does not disclose each and every feature of claims 4, 5, 18-20, 30, 32, 47-49 and 52 and therefore does not anticipate claims 4, 5, 18-20, 30, 32, 47-49 and 52.

Independent claims 4, 18, 30, and 47 each require a coating blend and a puffable food component where the puffable food component is in coating relation with the coating blend (claims 4 and 18) or the coating blend and the puffable food component are in coating relation with each other (claims 30 and 47).

The Examiner’s rejection based on the Lee patent is premised on the assumption that the Lee patent allegedly discloses simultaneous popcorn puffing and candy bar melting. This assumption is in error. The Lee patent only discloses popcorn popping followed by melting of the candy bar atop the popcorn that has already been popped. As to Example II of the Lee patent, refer to column 10, line 62, through column 11, line 5. As to Example IV of the Lee patent, refer to column 12, lines 32-49. As

explained at column 12, lines 32-36, the candy bar is in a bag that may be in the carton holding the unpopped popcorn, but the unpopped popcorn and candy bar clearly are held separately from each other, even if physically located in the same carton.

The Lee patent does not disclose each and every detail required by claims 4, 18, 30, and 47. Consequently, the Lee patent does not anticipate claims 4, 18, 30, and 47.

Claims 4, 18, 30, and 47 are believed allowable for at least the reasons provided above. Claim 5 is also believed allowable, since claim 5 depends from allowable claim 4. Also, claims 19-20 are believed allowable, since claims 19-20 each depend from allowable claim 18. Additionally, claim 32 is believed allowable, since claim 32 depends from allowable claim 30. Finally, claims 48-49 and 52 are each believed allowable, since claims 48-49 and 52 each depend from allowable claim 47. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections of claims 4-5, 18-20, 30, 32, 47-49, and 52 under 35 U.S.C. §102(b) based on the Lee patent and that claims 4-5, 18-20, 30, 32, 47-49, and 52 be allowed.

***Claim Rejections Under 35 U.S.C. §103(a) Based On The Lee Patent***

In the Office Action, the Examiner rejected claims 22, 25, 26, 53-55, 58 and 61 under 35 U.S.C. 103(a) as allegedly "being unpatentable over" the Lee patent. According to the Examiner:

Lee discloses a process for making candy coated snack foods, such as popcorn. At example VII the caramel coating syrup is described to contain sugar, corn syrup, molasses, salt, oil, lecithin and water. In examples II and VI the syrup is combined with unpopped popcorn. At example VII the prepared samples were stored at 70, 80, 90, 100 and 110F for seven days and then they were evaluated for their tendency to block or aggregate. The claims appears to differ from the reference in the recitation of the storage time. To access the storage life of a good product by an accelerated high temperature method (as shown by Lee) or by a low temperature, long time method (as set forth in the claims) would have been an obvious step in evaluating the commercial utility of a food product. It is appreciated that "potentially reactive ingredient" is not described but fats, oils and sugars are all known to be potentially reactive ingredients upon storage.

Despite the Examiner's comments, the Lee patent does not teach, suggest, disclose, or render obvious the invention of the above-identified application, as defined in claims 22, 25, 26, 53-55, 58 and 61.

Claim 22 defines a puffable food composition that comprises a coating blend and a puffable food component, with "the puffable food component located in coating relation with the coating blend." Claim 53 defines a method of making a coated puffed food product. The method of claim 53 comprises forming a coating blend. The method of claim 53 also comprises "placing the coating blend and a puffable food component in coating relation with each other."

The Examiner's rejection based on the Lee patent is premised on the assumption that the Lee patent allegedly discloses simultaneous popcorn puffing and candy bar melting. This assumption is in error. The Lee patent only discloses popcorn popping followed by melting of the candy bar atop the popcorn that has already been popped. As to Example II of the Lee patent, refer to column 10, line 62, through column 11, line 5. As to Example IV of the Lee patent, refer to column 12, lines 32-49. As explained at column 12, lines 32-36, the candy bar is in a bag that may be in the carton holding the unpopped popcorn, but the unpopped popcorn and candy bar clearly are held separately from each other, even if physically located in the same carton.

Clearly, the Lee patent does not teach simultaneous popcorn puffing and candy bar melting. Instead, the Lee patent teaches physical separation of the unpopped popcorn and candy bars. Additionally, the Lee patent teaches popping the popcorn followed by melting of the candy bar atop the popcorn that has already been popped. Consequently, it is clear the Lee patent does not teach, suggest, disclose, and make obvious the invention of the above-identified application, as defined in claims 22 and 53.

Claims 22 and 53 are believed allowable for at least the reasons provided above. Claim 25-26 are also believed allowable, since claims 25-26 depend from allowable claim 22. Also, claims 54-55, 58, and 61 are believed allowable, since claims 54-55, 58, and 61 each depend from allowable claim 53. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections of claims 22, 25, 26, 53-55, 58 and 61 under 35 U.S.C. §103(a) based on the Lee patent and that claims 22, 25, 26, 53-55, 58 and 61 be allowed.

***Applicant's Addition of New Claims 62-70.***

As noted above, Applicant has added new claims 62-70. New claims 62-70 are believed allowable. Consequently, Applicant respectfully requests consideration and allowance of new claims 62-70.

**CONCLUSION**

Applicant believes claims 1-6, 18-32, and 47-61 are allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and allow claims 1-6, 18-32, and 47-61. Likewise, Applicant believes new claims 62-70 are allowable. Consequently, Applicant respectfully requests that the Examiner consider and allow new claims 62-70. The Examiner is invited to contact Applicant's below-named attorney as appropriate to resolve any remaining issues standing as an impediment to allowance of the above-identified application.

Respectfully submitted,  
KINNEY & LANGE, P.A.

Date: February 25, 2003

By Philip F. Fox  
Philip F. Fox, Reg. No. 38,142  
THE KINNEY & LANGE BUILDING  
312 South Third Street  
Minneapolis, MN 55415-1002  
Telephone: (612) 339-1863  
Fax: (612) 339-6580

PFF:alg

**APPENDIX:**  
**MARKED UP VERSION OF CLAIM AMENDMENTS**

**Claims 4 and 30 are amended as follows:**

4. (Amended) A composition, the composition comprising:

a puffable food component; and

a coating blend, the puffable food component located in coating relation with the coating blend, the coating blend comprising a sweetening agent, the coating blend effective for forming a fat continuous coating that comprises water on a puffed form of the puffable food component upon application of energy to the composition that is sufficient to puff the puffable food component.

30. (Amended) A method of making a coated puffed food product, the method comprising:

forming a coating blend, the coating blend comprising a sweetening agent;

placing the coating blend and a puffable food component in coating relation with each other; and

applying energy to the coating blend and to the puffable food component, the applied energy effective to transform the puffable food component into a puffed food component while transforming the edible emulsion into a fat continuous coating on the puffed food component to form the coated puffed food product, the fat continuous coating comprising water.

**New claims 62-70 are added as follows:**

--62. The composition of claim 4, wherein the fat continuous coating comprises a water-in-oil emulsion or an oil-in-water-in-oil emulsion.--

**APPENDIX:**  
**MARKED UP VERSION OF CLAIM AMENDMENTS**

--63. A composition, the composition comprising:  
a puffable food component; and  
a coating blend, the coating blend comprising:  
a sweetening agent; and  
water, the concentration of water in the coating blend ranging  
from about five weight percent to about 40 weight percent, based  
on the total weight of the coating blend; and  
wherein the puffable food component is located in coating relation with the  
coating blend, and the coating blend is effective for forming a fat  
continuous coating on a puffed form of the puffable food  
component upon application of energy to the composition that is  
sufficient to puff the puffable food component.--

--64. The composition of claim 63 wherein the coating blend further comprises fat or  
oil, the concentration of the sweetening agent, based upon the dry weight of the sweetening agent,  
in the coating blend, based upon the total weight of the coating blend, ranging from about 40 weight  
percent to about 70 weight percent.--

--65. The composition of claim 63 wherein the puffable food component comprises raw  
poppable corn kernels.--

--66. The method of claim 30, wherein the fat continuous coating comprises a water-in-  
oil emulsion or an oil-in-water-in-oil emulsion.--

--67. A method of making a coated puffed food product, the method comprising:  
forming a coating blend, the coating blend comprising  
a sweetening agent; and

**APPENDIX:  
MARKED UP VERSION OF CLAIM AMENDMENTS**

water, the concentration of water in the coating blend ranging from about five weight percent to about 40 weight percent, based on the total weight of the coating blend;

placing the coating blend and a puffable food component in coating relation with each other; and

applying energy to the coating blend and to the puffable food component, the applied energy effective to transform the puffable food component into a puffed food component while transforming the edible emulsion into a fat continuous coating on the puffed food component to form the coated puffed food product.--

--68. The method of claim 67 wherein the coating blend further comprises fat or oil, the concentration of the sweetening agent, based upon the dry weight of the sweetening agent, in the coating blend, based upon the total weight of the coating blend, ranging from about 40 weight percent to about 70 weight percent.--

--69. The method of claim 67 wherein the puffable food component comprises raw poppable corn kernels.--

--70. The method of claim 47 wherein the temperature sufficient to remove any memory of crystallization from the fat is preferably at least about 155°F, or more.--